

Congress of the United States

Washington, D.C.

August 4, 2021

The Honorable Merrick Garland
Attorney General
U.S. Department of Justice
Washington, D.C. 20530

Dear Attorney General Garland,

We write regarding your decision not to open a Civil Rights of Institutionalized Persons Act (CRIPA) investigation of any public nursing facility within New York State after Governor Andrew Cuomo's administration required nursing homes to admit COVID-19 positive patients and knowingly withheld information on COVID-19 deaths in New York's nursing homes from Federal investigators.

The U.S. Department of Justice (Department) is responsible for upholding the constitutional and statutory rights of people confined to residential institutions, including state-run nursing facilities. 42 U.S.C. § 1997 authorizes the Department to open an investigation upon reasonable belief that vulnerable populations may be subject to a pattern or practice that deprives them of their rights under the law, including practices that subject them to harm. On August 26, 2020, the Department requested data from Governor Cuomo on New York State's order requiring nursing homes to admit COVID-19 patients and the number of COVID-19 cases and deaths that resulted from this policy to determine if a CRIPA investigation was warranted.¹

Since the Department's request last August, it has become clear Governor Cuomo and his administration are intent on falsifying or withholding information in their effort to cover up their deadly nursing home policy and avoid public accountability. On January 28, 2021, New York State Attorney General Letitia James released a report stating Governor Cuomo's administration underreported COVID-19 deaths in nursing homes by 55.7 percent.² Following the report's release, the Secretary to the Governor admitted to State legislators on a February 10, 2021, Zoom call that the Governor's office withheld information from the Department and "froze" when determining what information they would provide to the Department out of fear the factual numbers "would be used against us".³

The people of New York and the thousands of families of nursing home residents who tragically lost their lives due to these unconscionable actions are rightly demanding answers. They deserve full transparency from the Department following the decision not to open a CRIPA investigation, which was provided without any justification in a July 23, 2021 letter to our offices.

¹ Department of Justice, *Department of Justice Requesting Data From Governors of States that Issued COVID-19 Orders that May Have Resulted in Deaths of Elderly Nursing Home Residents* (August 26, 2020), <https://www.justice.gov/opa/pr/departments-justice-requesting-data-governors-states-issued-covid-19-orders-may-have-resulted>

² New York State Office of the Attorney General, *Nursing Home Response to COVID-19 Pandemic* (January 30, 2021), <https://ag.ny.gov/sites/default/files/2021-nursinghomesreport.pdf>

³ New York Post, *Cuomo Aide Admits They Hid Nursing Home Data so Feds Wouldn't Find Out* (February 11, 2021), <https://nypost.com/2021/02/11/cuomo-aide-admits-they-hid-nursing-home-data-from-feds/>

To this end, we request a copy of all materials reviewed by the Department's Civil Rights Division in making this determination and responses to the following questions:

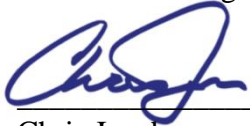
- 1) Did New York State respond to the Department's August 26, 2020 letter within the requested 14 days?
- 2) Has New York State provided all data and information requested in the Department's August 26, 2020 letter, including the number of Public Nursing Home residents and employees who died of COVID-19 in a nursing home or after being transferred to any other location?
- 3) How did the Department verify the accuracy of all information provided by New York State, considering New York State AG James' findings of significant underreporting of COVID-19 nursing home deaths?
- 4) Is the Department considering charges against Governor Cuomo or his administration for violating 18 U.S.C. § 1001 after the Secretary to the Governor admitted the Governor's office withheld information from Federal investigators out of fear it would "be used against us" in a Zoom call with New York State lawmakers on February 10, 2021?
- 5) How did the Department make the determination that New York State's order requiring nursing homes to accept COVID-19 patients did not deprive the civil rights of nursing home residents and put them at unnecessary risk, and what data supported this determination?
- 6) Was Governor Cuomo or his staff notified, formally or informally, of the Department's decision not to open a CRIPA investigation prior to July 23, 2021?

Thank you for your prompt attention to this important matter, and we look forward to receiving your response.

Sincerely,



Elise M. Stefanik
Member of Congress



Chris Jacobs
Member of Congress



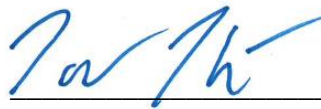
Tom Reed
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Claudia Tenney
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Nicole Malliotakis
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